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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DARWIN MAZARIEGOS-DIAZ,) Case No.

Plaintiff,

v.

LAUREN NICHOLE PARNELL and
JESSICA JACOBSEN,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1442(a)(1), 1446, 2679(d)(2), the United States of America, for itself and on behalf of Defendant Lauren Nichole Parnell ("Parnell"), a federal employee acting in the course and scope of federal employment or office at the time of the subject incident, removes this case to the United States District Court for the District of Nevada. The grounds for removal are as follows:

On or about December 8, 2016, Plaintiff commenced this action in the Eighth Judicial District Court, Justice Court, Clark County, Nevada as case no. A-16-747788-C. Plaintiff alleges that Parnell negligently operated a vehicle on May 19, 2015 so as to cause or contribute to damages to Plaintiff. (A copy of Plaintiff's complaint is attached hereto.)

1 This action is being removed pursuant to the Federal Tort Claims Act, which provides in
2 pertinent part:

3 Upon Certification by the Attorney General that the defendant employee was acting
4 within the scope of his office employment at the time of the incident out of which the
5 claim arose, any civil action or proceeding commenced upon such claim in a State
6 court shall be removed without bond at any time before trial by the Attorney General
7 to the district court of the United States for the district and division embracing the
place in which that action or proceeding is pending. Such action or proceeding shall
be deemed to be an action against the United States . . . , and the United States shall be
substituted as the party defendant.

8 28 U.S.C. § 2679(d)(2). The Attorney General has delegated to United States Attorneys the
9 authority to certify that a federal employee was acting in the course and scope of his
10 employment at the time of the incident at issue. 28 C.F.R. § 15.4. The United States Attorney
11 for the District of Nevada has certified that Parnell was acting in the course and scope of federal
12 employment or office at the time of the incident that is the subject of Plaintiff's Complaint.

13 Additionally, federal district courts have exclusive jurisdiction for tort claims arising
14 from the negligent or wrongful acts or omissions of federal employees acting within the scope
15 of their employment or office. *See* 28 U.S.C. § 1346(b)(1). Plaintiff has not served process in
16 accordance with the applicable court rule, Fed. R. Civ. P. 4(i). Until formal service, which is
17 required for a court to exercise power over a defendant, the United States is under no obligation
18 to file a response to the complaint. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
19 U.S. 344, 350, 355 (1999); *see also Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)
20 ("Neither actual notice, nor simply naming the person in the caption of the complaint, will
21 subject defendants to personal jurisdiction if service was not made in substantial compliance
22 with Rule 4.") (citation omitted); *Corey v. McNamara*, 409 F. Supp.2d 1225, 1229 (D. Nev.
23 2006) (holding that court lacked personal jurisdiction over federal defendants who were not
24 served in accordance with Fed. R. Civ. P. 4(i)). The United States does not, by filing this notice,
25 waive service of process or any other defenses available under Fed. R. Civ. P. 12(b) or other
26 applicable law.

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1 This action is also being removed pursuant to 28 U.S.C. § 1442(a)(1), which provides in
2 pertinent part:

3 “A civil action ... that is commenced in a State court and that is against or directed to
4 any of the following may be removed by them to the district court of the United States
5 for the district and division embracing the place wherein it is pending: (1) The United
6 States or any agency thereof or any officer (or any person acting under that officer) of
the United States or of any agency thereof, in an official or individual capacity, for or
relating to any act under color of such office”

7 28 U.S.C. § 1442(a)(1). Section 1442(a)(1) provides for a “broad” grant of removal jurisdiction
8 and is not given a “narrow, grudging interpretation.” *Nationwide Investors v. Miller*, 793 F.2d
9 1044, 1046 (9th Cir. 1986) (citing *Gillingham v. Morgan*, 395 U.S. 402, 407 (1969)). Under
10 Section 1442(a)(1), federal court jurisdiction need not even be apparent from the face of the
11 complaint itself. *See Jefferson Cnty. v. Acer*, 527 U.S. 423 (1999); *Mesa v. California*, 489 U.S.
12 121 (1989).

13 WHEREFORE, the United States gives notice that the above-captioned action, pending
14 in the Eighth Judicial District Court, Clark County, Nevada, is now removed to the United
15 States District Court for the District of Nevada

16 Respectfully submitted this 9th day of February 2017.

17 DANIEL G. BOGDEN
18 United States Attorney

19 /s/ Patrick A. Rose
20 PATRICK A. ROSE
21 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I, Patrick A. Rose, certify that the following individuals were served with the **NOTICE OF REMOVAL** on the date and via the method of service identified below.

U.S. Mail and Electronic Mail:

Anthony P. Sgro
Andrew D. Sedlock
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Attorneys for Plaintiff

Dated this 9th day of February 2017.

/s/ Patrick A. Rose
PATRICK A. ROSE
Assistant United States Attorney